

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

RAUL I. CALDERON,	)	
	)	
Plaintiff,	)	4:06cv3278
	)	
vs.	)	MEMORANDUM AND ORDER
	)	
UNKNOWN,	)	
	)	
Defendant.	)	

This matter is before the court on filing nos. 2 and 9 filed by the plaintiff, Raul I. Calderon, a prisoner in the custody of the Nebraska Department of Correctional Services ("DCS"). The plaintiff moves for leave to proceed in forma pauperis ("IFP") in this case, but he also seeks to dismiss this action and to receive a refund of the \$350 filing fee which he mistakenly paid in this action.

The plaintiff's prisoner account statement indicates that he qualifies financially to proceed IFP, and thus, filing no. 2 is granted. Therefore, the plaintiff will be proceeding IFP from this point forward in the case, even if the case is voluntarily dismissed.

However, the plaintiff's filing fee is nonrefundable. Because the court cannot refund the plaintiff's filing fee, the plaintiff shall have thirty (30) days from the date of this order to notify the court in writing if he wishes to withdraw his voluntary dismissal. If a written withdrawal of the plaintiff's motion to dismiss is not filed by that date, the court, without further notice, will dismiss the above-entitled action without prejudice.

THEREFORE, IT IS ORDERED:

1. That filing no. 2, the plaintiff's Motion for Leave to Proceed In Forma Pauperis ("IFP"), is granted, and the plaintiff will be proceeding IFP from this point forward in the case;

2. That filing no. 9, the plaintiff's Motion to Dismiss and for Refund of the Filing Fee is granted in part and denied in part as follows:

- a. The plaintiff may dismiss this case without prejudice, but the filing fee cannot be refunded;
- b. Because the filing fee cannot be refunded, the plaintiff shall have (30) days from the date of this order to notify the court in writing if he wishes to withdraw his voluntary dismissal;
- c. If a written withdrawal of the plaintiff's motion to dismiss is not filed by that date, the court, without further notice, will dismiss the above-entitled action without prejudice.

DATED this 6th day of June, 2007.

BY THE COURT

s/ Joseph F. Bataillon  
JOSEPH F. BATAILLON  
Chief District Judge